

No. 5.

ON CRIMINAL PROSECUTIONS.

Sessional Paper, 1860,
A3, No. 2.
Ditto, 1861, D. 2A, No. 4.

The Judges of the Supreme Court, assembled in Conference, respectfully beg to recall the attention of His Excellency's Government to the Reports forwarded to the Government in 1859 and 1861, touching the subject of Criminal Prosecutions. They find that, in two Provinces of the Colony, gentlemen calling themselves "Crown Prosecutors" repudiate all responsibility as Solicitors for the conduct of the prosecution, and claim to appear as Counsel, instructed only by the depositions, the result of which, as might be expected, is frequent failure of justice. The Judge within whose district this practice occurs has hitherto foreborne from taking any practical steps in the matter, in the hope that, as he has repeatedly called the attention of the gentlemen in question to their want of *status* as public prosecutors, some arrangement would be made between them and the Attorney-General, by which the Judge might be relieved from the disagreeable duty of refusing to hear them, unless they profess to be retained by the party bound over to prosecute, or appear with the consent, and on behalf, of the Attorney-General, subject to the usual duties and responsibilities of Solicitors and Counsel for prosecutions.

The Judges agree that it would not be proper to allow the anomalous state of things above described to continue, but think it better to communicate with the Government, so as to give the Attorney-General an opportunity of intervening, if it should be deemed desirable, before the Judge of the district proceeds, as all the Judges think him bound to do, to refuse to hear the so-called "Crown Prosecutors" in question, and thereby to create a public scandal, affecting the administration of justice.

GEORGE ALFRED ARNEY, C.J.,
ALEXANDER J. JOHNSON, J.,
H. B. GRESSON, J.,
C. W. RICHMOND, J.

Christchurch, 9th March, 1863.

The Honorable the Colonial Secretary.

No. 6.

AS TO THE COURT OF APPEAL, CIRCUIT COURTS, VACATION, &c.

SIR,—

The Judges of the Supreme Court assembled in Conference, have the honor to acknowledge the receipt of your letter of the 23rd February in answer to their communication to you of the 7th of that month.

As His Excellency's Government approve of the Programme suggested by the Judges for the sittings of the Supreme Court throughout the Colony, the Judges have the honor to request that the necessary Proclamations be made in time to give ample notice to the public.

On the subject of the place at which the Court of Appeal should be held hereafter, respecting which you invite the Judges to express their opinion, they think that it will probably be desirable that they should wait till after the June Sittings to ascertain whether any business has arisen for the Court, and from whence the principal part is likely to come, as there will be ample time between the conclusion of those sittings and the month of October, to give the statutory notice of the sitting of the Court.

Mr. Justice Johnston will be prepared to undertake the holding of the Circuit Courts at Wanganui and Picton when the local Authorities shall have arranged with His Excellency's Government respecting conveyance and the necessary accommodation and appliances for the Court. If it be deemed desirable that he should go to Wanganui, arrangements might probably be feasible for conveyance by land.

The Judges beg to offer the Government their best thanks for the expression of a desire to relieve them from the inconveniences to which they are subjected in travelling by sea, on the public service, and for authorizing each of them to engage a cabin with two sleeping berths, when necessary. This boon will often be practically unavailable, except in cases of a journey from one terminus of the steam communication to the other; but the Judges fully appreciate the difficulty of making a more satisfactory arrangement, and are grateful to the Government for this concession towards their comfort.

With respect to the lengthening of the vacation, the Judges think there may, probably, be some

person who may be so confined as aforesaid," which somewhat obscures the meaning of the words of reference. It might possibly be argued that "so confined as aforesaid" means "in solitary confinement as aforesaid." It is also to be observed that in the definition of the second class of offences the term "every convict" is used apparently as synonymous with the phrase "every person who may be so confined as aforesaid." But if the same thing is meant, the same words should be used. It is not, perhaps, perfectly clear that the 10th section of the "Secondary Punishment Act, 1854," authorises the making punishable of one and the same offence by a series of periods of solitary confinement, in the same manner as the 12th section makes punishable the offence of escape committed by a life convict. Probably it may be desirable that the Regulations in force in all the Gaols of the Colony should undergo a careful revision. At present they differ in regard to the severity of punishment more than any local circumstances can require. Clause 34 of the Hawke's Bay Regulations purports, we observe, to authorise close confinement for any period not exceeding one month.